

IN THE SENATE OF THE UNITED STATES.

[To accompany bill S. 550.]

LETTER

FROM

THE SECRETARY OF THE TREASURY,

IN REFERENCE TO

The claim of David Ogden and others, to be refunded moneys illegally exacted of them by collectors of the customs.

FEBRUARY 28, 1857.—Ordered to be printed.

TREASURY DEPARTMENT,
February 17, 1857.

SIR: I have to acknowledge the receipt of your letter of the 11th instant, submitting the memorial of David Ogden and others, for the return of "fees paid for baggage permits," with a bill for their relief.

Under the act of March 2, 1799, usually called the compensation act, twenty (20) cents is prescribed as the fee for a permit to land goods, and under the 46th section of the general collection act, of the same date, baggage may be entered as other goods.

It seems that in the cases referred to by the petitioners the collector of customs at New York, to relieve, apparently, the owner or consignee of a vessel, bringing a large number of passengers, from the onerous charge of paying for a permit to land *each* passenger's baggage, adopted the practice, without the sanction of the department, of delivering baggage on a general permit, for which general permit he charged twenty cents, and twenty cents additional for every five passengers whose baggage was delivered under said permit.

I am constrained to say that the petitioners have, in my view of the case, not the slightest equitable right whatever to be reimbursed the amount from the treasury. The collector of customs under the law might have charged them twenty cents for *each* passenger; instead of that, he only charged twenty cents for each *five* passengers, thus far waiving his *legal right for their benefit and convenience*; and now, after a lapse of many years, without having asserted any right by action

at law, the petitioners come to Congress for relief, in cases barred by the statute of limitations. The equity is all on the other side, for if any party was defrauded of just dues it was the government, and not the petitioners, unless they deem it a hardship to pay twenty, instead of one hundred cents, as they might have been legally compelled to pay, if the collector had exercised his full power under the law.

If the collector, in the exaction of fees for landing baggage, acted *without authority* of either law or instructions, and therefore rendered himself personally liable, that liability the government is under no obligation to assume, nor ought it so to do, unless it is prepared itself to indemnify all who have been subjected to illegal demands which persons holding commissions under its authority may choose, *in defiance of law and instructions*, to levy under color of office. The hazard to the public treasury of establishing such a principle needs no comment.

This claim, so far as it was a naked legal right to recover the excess of fees paid for one general permit, is merely a personal one against the collector; none of the moneys thus exacted have ever come into the treasury. Out of these and other fees, the compensation of the collector and his clerks was paid, and instead of there being a surplus paid into the treasury, the treasury was obliged to contribute to make up the compensation of those officials in pursuance of law.

The practice of charging twenty cents for every five passengers, in *addition* to the charge of twenty cents for the *general* baggage permit, was brought to the notice of the department in 1853, when a suit was instituted to recover the said "twenty cents charged for every five passengers." The court decided that the said charge was illegal, and gave judgment for the excess. The department, to prevent a multiplicity of suits and consequent heavy costs, acquiesced in the decision, and directed that but twenty cents should be charged for a "general permit" to cover the baggage of all the passengers of any one vessel, and did not require the continuance of the old practice of issuing a permit for *each* passenger's baggage, because of the great delay and inconvenience to shipowners and agents attending such a proceeding, and because, in the revision of the revenue laws then preparing, it was determined to recommend the abolition of all fees.

After the decision of the court above referred to, application was made to the department by David Ogden, of New York, *as agent* of certain shipowners or agents for a return of the fees charged, at the rate of twenty cents for every five passengers arriving in vessels consigned to the various parties, and paid by said owners or agents. The department returned the fees claimed, which had been exacted and paid within the last *six* years, (the limit of the statute of limitations of the State of New York,) but, there being no equity whatever in the demand, declined to go further back than the said six years; from which period, the collector being protected by the statute of limitations, the department left him to the protection afforded by the law.

This indemnification of the collector, who merely conformed to practice he found, on entering office, to have been long in force, was extended by the department under such circumstances; but it has felt no obligation to do so, when the collector could protect himself

against an inequitable demand by pleading in bar the statute of limitations.

For the foregoing reasons, and others, which will readily suggest themselves, the department is decidedly of the opinion that there is no equity whatever in the claim to be reimbursed the fees exacted in these cases, by a waiver of the full demands of the government for the benefit of the owner or consignee of the vessel, and which, in the absence of direct proof, it is a fair presumption, the arrangement being for *their benefit* and *against the government*, was made at their request, or at least with their full acquiescence.

The memorial and bill are herewith returned.

Very respectfully, your obedient servant,

JAMES GUTHRIE,

Secretary of the Treasury.

Hon. HENRY DODGE,

Chairman Committee on Commerce, Senate.

34th Congress, }
2d Session. }
No. 24.
against an insupportable demand by placing in her the status of

For the foregoing reasons, and others, which will readily suggest themselves, the Department is decidedly of the opinion that there is no equity whatever in the bill. The bill is not created in the name of the Government, but is a private bill, and which, in the absence of the owner or assignee of the patent, and which, in the absence of direct proof, it is a fair presumption, the Government being for their benefit and against the patentee, was made at their request, or at least with their full acquiescence.

The Government and bill are herewith returned.
Very respectfully,
Hon. Henry D. Rogers,
Chairman Committee on Commerce, Finance,
and the Currency of the Treasury.

1875

SMITHSONIAN INSTITUTION.

REPORT OF THE SECRETARY OF THE INSTITUTION,
FOR THE YEAR 1875.
OPERATIONS, EXPENDITURES, AND CONDITION OF THE
INSTITUTION, FOR THE YEAR 1875.

1875

1875